

Decision **PROPOSED DECISION OF ALJ MacDONALD (Mailed 10/29/2015)**

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Sheri Johnson and Douglas Tabler,

Complainants,

vs.

Pacific Gas and Electric Company (U39E),

Defendant.

Case 15-04-009  
(Filed April 3, 2015)

**DECISION DENYING RELIEF**

**Summary**

This decision denies Complainants' request for exemption from the requirement to pay an initial fee and monthly charge for choosing to opt-out of Defendant's SmartMeter Program. This decision finds that Pacific Gas and Electric Company must apply the duly adopted tariff and does not have authority to exempt individual customers. In addition, this decision concludes that Complainants' have failed to follow Public Utilities Code Section 1702 and Commission Rules of Practice and Procedure (Rule) 4.1(b) regarding the reasonableness of any utility rates or charges. Finally, this decision concludes that Complainants may not raise the issue of whether a wireless smart meter poses a health risk or safety hazard to them because they do not have such a meter at their residence.

**Procedural Background**

Complainants filed the instant matter on April 3, 2015 seeking a determination that wireless smart meters pose a health and safety risk to Complainants and their home. Complainants also seek relief from opt-out fees. The Notice and Instruction to Answer was issued on April 16, 2015. Defendant timely answered the Complaint.<sup>1</sup>

A prehearing conference was held on July 20, 2015. On August 7, 2015, Commissioner Liane Randolph issued a Scoping Memo and Ruling. Complainants timely filed their opening brief on September 30, 2015. Defendant's reply brief was timely filed on October 12, 2015.

**Complaints' Contention**

The Complainants reside in Eureka, CA. Ms. Sheri Johnson and Mr. Douglas Tabler (Complainants) are customers of Pacific Gas and Electric Company (PG&E or Defendant). Complainants contend that smart meters are a known fire hazard that pose too great a risk to be installed on their home, built of wood in the 1880's. In addition, Complainants assert that smart meter emissions cause illnesses. Complainants seek a stay against PG&E from forcibly installing a smart meter at their home. Complainants also seek relief from PG&E's SmartMeter Opt-Out fees.

Complainants argue that the original "contract" for service signed by Ms. Johnson does not permit the forced installation of a wireless smart meter nor does it allow PG&E to bill for opt-out fees. Complainants further contend that the one-time \$75.00 opt-out fee and the \$10.00 monthly fees are unreasonable.

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<sup>1</sup> The answer was due on May 16, 2015, which fell on a Saturday. As a result, the Answer was timely filed on May 18, 2015.

Complainants also argue that the fee for participating in the Self-Read Meter Program is unreasonable and a violation of Pub. Util. Code Section 451.

Complainants assert the fee is unreasonable because Complainants read their own analog meter and provide the information to PG&E who incurs no labor cost.

Complainants feel that the cost of the Self-Read Meter Program<sup>2</sup> is unreasonable and unfair to customers who are enrolled in the Self-Read Program.<sup>3</sup> As of the date of the Prehearing Conference, Complainants had not enrolled in the Self-Read Program.

### **Defendant's Defenses**

Defendant contends that the complaint fails to raise any violation of law or tariff by PG&E. Complainants acknowledged during the Prehearing Conference that there is no SmartMeter installed at their home. As a result, Defendant argues that Complainants are precluded from complaining that a wireless smart meter poses a fire hazard or health hazard to Complainants' home or health.

Defendant next asserts that PG&E's utility service relationship is governed by Commission-approved tariffs which expressly authorize and require Defendant to apply the SmartMeter Opt-Out Program fees.<sup>4</sup> Defendant asserts that the Commission has specifically determined that PG&E's opt-out fees have

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<sup>2</sup> Complainants did not raise any issues regarding PG&E's Self-Read Meter Program in their complaint. The Self-Read Meter Program was discussed as an alternative or adjunct to the SmartMeter Opt-Out program during the Prehearing Conference.

<sup>3</sup> Complainants argue that PG&E charges \$60 per analog meter read under the Self-Read Meter Program for a single reading but charges \$60 for three analog meter reads under the SmartMeter Opt-Out program.

<sup>4</sup> See PG&E Electric Schedules E-SOP and Gas Rate Schedule G-SOP, described in PG&E Advice Letter 3568-G/4594-E, January 1, 2015.

been authorized and mandated as just and reasonable pursuant to Decision (D.) 14-12-078.

**Discussion**

Initially, we find that Complainants do not have standing to litigate the issue of whether or not wireless smart meters are a risk to Complainants. Complainants have an analog meter at their residence.<sup>5</sup>

Complainants' request for an order to prevent Defendant from forcibly installing a wireless smart meter at their residence is moot. California's residential ratepayers are not required to have a wireless smart meter installed at their homes and are permitted to choose to use an analog meter. However, the choice to opt-out of using a wireless smart meter has associated costs because the standard for metering in California has been transitioned to wireless smart meters.

Complainants' contention that their utility service is governed by a contract is not accurate. Defendant provides utility services to customers under tariffs duly adopted by the Commission. As relevant here, D.14-12-078 adopted fees and charges for residential customers in Defendant's service territory for customers who did not wish to have a wireless smart meter.<sup>6</sup> The Commission concluded that a customer selecting the Opt-Out option should be assessed an initial charge to install the non-communicating meter and a monthly charge.<sup>7</sup>

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<sup>5</sup> RT 13: 10-12.

<sup>6</sup> As used in this proceeding, a wireless smart meter is a digital electric or gas meter that transmits customer usage data through radio transmission.

<sup>7</sup> D.14-12-078 at 3.

The Commission limited the length of time opt-out customers would be required to pay to 36 months.

After fully litigating the question, the Commission determined that opt-out customers should bear the incremental costs associated with offering an opt-out option up to a cap.<sup>8</sup> The Commission determined that it was reasonable to charge an initial fee of \$75.00 and a monthly charge of \$10.00 for a three-year period for customers who chose not to have a wireless smart meter.<sup>9</sup> The Commission chose to limit collection to a three-year period to balance the appropriate allocation of costs with the need to set fees at a level that do not unreasonably deter customers from electing this option.<sup>10</sup> The Commission did not allow PG&E the discretion to exempt any residential customers.<sup>11</sup>

We find that Complainants have failed to demonstrate that PG&E violated any applicable rule, law or tariff in charging opt-out fees for Complainants' continued use of an analog meter. PG&E does not have the discretion to exempt residential customers who choose to keep their analog meters.

Finally, Complainants' contention that the charge to opt-out customers of the SmartMeter Opt-Out Tariff is unreasonable is not properly before the Commission. Complainants have failed to follow Pub. Util. Code §1702 and Commission Rules of Practice and Procedure (Rule) 4.1(b) regarding the reasonableness of any utility rates or charges. Specifically, that:

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<sup>8</sup> See D.12-02-014, which adopted the interim SmartMeter Opt-Out Program.

<sup>9</sup> D.14-12-078 at 38-40.

<sup>10</sup> D.14-12-078 at 39.

<sup>11</sup> D.14-12-078, Ordering Paragraph 2-3.

No complaint shall be entertained by the Commission, except upon its own motion, as to the reasonableness of any rates or charges of any gas, electrical, water, or telephone corporation, unless it be signed by the mayor or the president or chairman of the board of trustees or a majority of the council, commission, or other legislative body of the city or city and county within which the alleged violation occurred, or by not less than 25 actual or prospective consumers or purchasers of such gas, electric, water, or telephone service.

Thus, for the foregoing reasons, Complainants' request for immediate relief and exemption from the opt-out fees is denied.

### **Comments on the Proposed Decision**

The proposed decision of the Administrative Law Judge in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No comments were received.

### **Assignment of Proceeding**

Liane Randolph is the assigned Commissioner and Katherine Kwan MacDonald is the assigned Administrative Law Judge in this proceeding. Judge MacDonald is the Presiding Officer.

### **Findings of Fact**

1. Complainants are residential customers of Defendant, PG&E.
2. Complainants do not have a wireless smart meter and have retained an analog meter at their residence.

### **Conclusions of Law**

1. Defendant's SmartMeter Opt-Out Program is governed by the SmartMeter Opt-Out Tariff.
2. Defendant must strictly adhere to its lawfully published tariff.

3. D.14-02-078 requires Defendant to collect a fee of \$75.00 and a monthly charge of \$10.00 from residential customers who opt-out of the SmartMeter Program for a period of three years from the date the customer chooses to opt out.

4. Complainants should pay the initial fee and monthly charge as required by the SmartMeter Opt-Out Program because they choose to retain an analog meter.

5. To contest the reasonableness of any utility rate or charge, Complainants must follow Pub. Util. Code § 1702 and Commission Rules of Practice and Procedure (Rule) 4.1(b).

**O R D E R**

**IT IS ORDERED** that:

1. The complaint of Sherri Johnson and Douglas Tabler is denied.
2. Case 15-04-009 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.